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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205634

DATE: May 7, 1982

MATTER OF: Medi-Car of Alachua County

DIGEST:

1. Contracting officer reasonably interpreted bid of \$0.90 per mile accompanied by the notation "Based on gasoline not exceeding \$1.30 per gallon," alleged by bidder to be merely informational, as offering a price of \$0.90 per mile only so long as the price of gasoline does not exceed \$1.30 per gallon. This interpretation renders bid nonresponsive to IFB that requires firm-fixed price. In any event, at best, bid is ambiguous and nonresponsive as subject to two reasonable interpretations, one of which would be responsive and the other nonresponsive.
2. Prior erroneous advice or contract actions of contracting agency does not estop an agency from rejecting a nonresponsive bid when required to do so by law, and resolicitation is not required even though prior agency conduct may have misled bidder into submitting the nonresponsive bid.

Medi-Car of Alachua County protests the rejection as nonresponsive of its bid under invitation for bids (IFB) No. 573-82-031 issued by the Veterans Administration Medical Center (Medical Center), Gainesville, Florida. In the alternative, the firm argues that resolicitation is appropriate. We conclude that the contracting officer was correct in rejecting the protester's bid, and we deny the protest.

The IFB called for the submission of a firm-fixed price for providing Veterans Administration (VA) beneficiaries nonemergency medical transportation service for 1 year. The protester submitted a bid indicating a mileage charge of \$0.90 per mile accompanied by an asterisk, explained on the same page

with the notation "Based on gasoline not exceeding \$1.30 per gallon." The contracting officer, viewing this notation as a qualification of the apparent low bid and an attempt to guard against future price increases in gasoline, rejected the bid as nonresponsive to the requirement for a firm-fixed-price contract.

The protester asserts that the above notation was not intended as a qualification of its bid or an attempt to protect itself against future price increases. The protester explains that, in the 2 immediately preceding years, it had entered into contracts with the VA to provide these services, and those contracts contained similar notations at the suggestion of the then contracting officer. This was and is intended, states the protester, simply as an informational statement of one of the factors used in arriving at the bid price, and does not make the current bid nonresponsive.

The VA advises that the prior acceptance of a bid with the subject notation "possibly resulted in an improper contract award." A thorough investigation of the prior years' contracts is not possible because the former contracting officer is now deceased.

Bid responsiveness requires an unequivocal offer to provide without exception exactly what is required at a firm-fixed price. International Salt Co., B-200128, January 7, 1981, 81-1 CPD 142. If a bidder attempts to qualify its bid to protect itself against future price changes, the bid must be rejected as nonresponsive. Joy Manufacturing Company, 54 Comp. Gen. 237 (1974), 74-2 CPD 183; Federal Procurement Regulations (FPR) § 1-2.404-2(b)(1) (1964 ed., amend 121). We have held that only material available at bid opening may be considered in making a responsiveness determination, Fisher-Klosterman, Inc., B-185106, March 9, 1976, 76-1 CPD 165, and that post-opening explanations by the bidder cannot be considered, United McGill Corporation and Lieb-Jackson, Inc., B-190418, February 10, 1978, 78-1 CPD 119, even if a lower price may be obtained in a particular procurement.

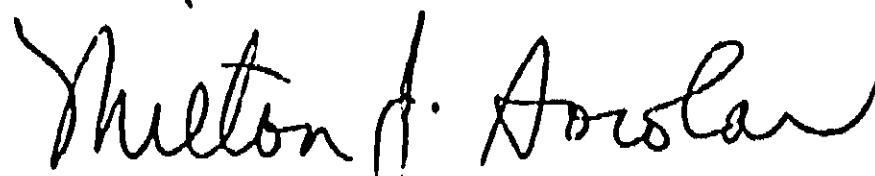
We conclude that the contracting officer reasonably interpreted the protester's bid as offering a price of \$0.90 per mile only so long as the price of gasoline did not exceed \$1.30 per gallon. So interpreted, under the above principles, the protester's bid is nonresponsive to the Government's requirement for a firm-fixed-price

contract and, therefore, was properly rejected under FPR § 1-2.404-2(b)(1). In any event, even assuming that the protester's interpretation is reasonable, it has consistently been held that when a bid is subject to two reasonable interpretations, one of which would be responsive and the other nonresponsive, the bid is ambiguous and must be rejected as nonresponsive. See, e.g., 50 Comp. Gen. 379 (1970); 53 Comp. Gen. 320, 326-327 (1973); Instant Replay Equipment Company; Recording Center Service Company, B-193826, June 15, 1979, 79-1 CPD 423; Aerol Company, B-195376, October 24, 1979, 79-2 CPD 287. Of particular significance, we found that a bid containing a similar notation to that inserted here by the protester was ambiguous and non-responsive to an IFB requirement for a firm-fixed price. Harco Inc., B-189045, August 24, 1977, 77-2 CPD 144. ("Bid based on brick price of \$90 per thousand.")

The protester argues that the notation was used in reliance on prior advice allegedly provided by or contract actions of the contracting activity. However, erroneous advice or contract actions of Government officials do not estop an agency from rejecting a nonresponsive bid when required to do so by law. See International Salt Company, supra; Edward E. Davis Contracting, Inc., B-188986, November 29, 1977, 77-2 CPD 419.

While we recognize that the protester may have included the disqualifying notation because of prior Government acceptance, the fact remains that adequate competition and reasonable prices were apparently obtained and there is no evidence of any deliberate attempt to preclude the protester from competing for the award. Therefore, the protester's request for resolicitation is not granted. Jensen Corporation, 60 Comp. Gen. 543 (1981), 81-1 CPD 524; Mor-Flo Industries, Inc., B-192687, June 5, 1979, 79-1 CPD 390; See Marine Inventory Surveyors, B-186790, September 1, 1976, 76-2 CPD 213; 36 Comp. Gen. 534 (1937).

The protest is denied.



Acting Comptroller General
of the United States